

# Calendar No. 1956

86TH CONGRESS }  
2d Session }

SENATE

{  
REPORT  
No. 1886

## FERDINAND HOFACKER

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AUGUST 22, 1960.—Ordered to be printed

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Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

### R E P O R T

[To accompany H.R. 11420]

The Committee on the Judiciary, to which was referred the bill (H.R. 11420) for the relief of Ferdinand Hofacker, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to pay Ferdinand Hofacker, Route 7, Newark, Ohio, \$700 in settlement of his claims for injuries and expenses incident to an accident which occurred on October 17, 1952, when a team of horses he was driving was frightened by a Government radiosonde device which fell in front of the team and caused them to bolt and run, with the result that Mr. Hofacker fell across the harrow pulled by the horses.

#### STATEMENT

The facts of this case and the conclusions of the House Committee on the Judiciary thereon are set forth in House Report No. 1906, as follows:

Air Force records disclose that on October 17, 1952, the 6th Weather Group Radiosonde Section, Sulphur Grove, Ohio (an organization of the U.S. Air Force), released, in the normal course of its air weather service operations, a radiosonde to ascertain weather conditions. This device, which descended by parachute into a field where Mr. Hofacker was

driving a team of horses pulling a harrow, caused the horses to bolt and run. The claimant ran after the horses and, when they stopped suddenly, fell over the harrow, injuring his right side. On October 24, 1952, a physician who examined the claimant found that he had a very definite right indirect inguinal hernia and also a small hernia through what apparently was the site of drainage of an old appendectomy wound. The physician's opinion was that the right inguinal hernia was caused by the accident. On January 8, 1953, the claimant was examined by an Army Medical Corps doctor who confirmed that an inguinal hernia was present, but added that he could not determine whether or not the hernia resulted from the accident, although it was a definite possibility. On February 19, 1953, an operation was performed on the claimant which reduced and repaired the hernia and disabled him until April 20, 1953. The surgeon stated that the chance of recurrence was only about 1 in 20.

On April 30, 1953, Mr. Hofacker filed a claim with the Department of the Army for \$3,500, covering injuries, loss of time, loss of income, and any future recurrence of injury. However, upon determining that the claim arose from activities of the Air Force, it was transferred to that Department on May 22, 1953. Thereafter, on June 16, 1953, the claim was returned to Mr. Hofacker without action because it was in excess of \$1,000, the amount that could be considered administratively by the Air Force under section 2672 of title 28, United States Code, and he was advised that his remedy was to bring suit under the Federal Tort Claims Act.

On October 8, 1953, Mr. Hofacker filed suit, for \$10,000, under the Federal Tort Claims Act, in the U.S. District Court for the Southern District of Ohio for injuries allegedly suffered because of negligence of the Air Force. This suit was determined in favor of the United States. Judgment was based upon the ground that the activity giving rise to the lawsuit involved a "discretionary function" within the purview of section 2680(a) of title 28, United States Code, and was an exception to the general waiver of sovereign immunity granted by the Federal Tort Claims Act. The appeal period for the judgment expired on May 25, 1956, and the judgment became final on that date.

A radiosonde device, such as that involved in this case, after reaching a predetermined altitude, descends by parachute. The only control over its place of landing is the air current prevailing at the time. Consequently, it is reasonably foreseeable that a radiosonde could cause injury or property damage in arriving at the earth's surface. Nevertheless, the use of these instruments is for a necessary and important purpose in connection with providing specialized meteorological information for national defense and warrants the slight risk involved.

As is evidenced in the Air Force report on the bill, in this case the proximate cause of the injuries to the claimant was

the free fall of the radiosonde device. However, Mr. Hofacker has no administrative remedy and no legal recourse against the United States because the doctrine of sovereign immunity applies here. In this connection, it is pointed out that a private citizen, under similar circumstances, might well be liable to the claimant.

The Air Force in its report detailed the foregoing facts and then concluded that for equitable reasons Mr. Hofacker should be compensated for his injuries and expenses. The committee agrees with this conclusion. That report also notes that Mr. Hofacker's medical expenses were \$357.81 and his loss of pay for part-time work was \$180. However, it is further noted that these figures do not include amounts for the full amount of wages he lost since he asserts he lost at least 6 months of pay. In these circumstances it appears that the \$700 stated in the bill is justified and, therefore, the committee recommends that the bill be considered favorably.

The committee is of the opinion that the House committee arrived at a sound judgment on the facts of this case, and therefore recommends that the bill, H.R. 11420, be given favorable consideration.

Attached hereto and made a part hereof is the report of the Department of the Air Force in connection with this claim.

DEPARTMENT OF THE AIR FORCE,  
*Washington, June 6, 1960.*

Hon. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Air Force with respect to H.R. 11420, 86th Congress, a bill for the relief of Ferdinand Hofacker.

The purpose of this bill is to authorize and direct the Secretary of the Treasury to pay to Ferdinand Hofacker, Route 7, Newark, Ohio, the sum of \$700, in full settlement of his claim against the United States. This sum is the amount claimed for injuries and expenses incurred by Mr. Hofacker as the result of an accident on October 17, 1952, when a team of horses driven by him was frightened by a Government radiosonde device which descended by parachute and fell directly in front of the team, causing the horses to bolt and run. As a result of this, Mr. Hofacker was injured when he fell across the harrow pulled by the horses.

The record shows that, on October 17, 1952, the 6th Weather Group Radiosonde Section, Sulphur Grove, Ohio (an organization of the U.S. Air Force), released, in the normal course of its air weather service operations, a radiosonde to ascertain weather conditions. This device, which descended by parachute into a field where Mr. Hofacker was driving a team of horses pulling a harrow, caused the horses to bolt and run. The claimant ran after the horses and, when they stopped suddenly, fell over the harrow, injuring his right side. On October 24, 1952, a physician who examined the claimant found that he had a very definite right indirect inguinal hernia and also a small hernia through what apparently was the site of drainage of an old appendectomy wound. The physician's opinion was that the right inguinal hernia was caused by the accident. On January 8,

1953, the claimant was examined by an Army Medical Corps doctor who confirmed that an inguinal hernia was present, but added that he could not determine whether or not the hernia resulted from the accident, although it was a definite possibility. On February 19, 1953, an operation was performed on the claimant which reduced and repaired the hernia and disabled him until April 20, 1953. The surgeon stated that the chance of recurrence was only about 1 in 20.

On April 30, 1953, Mr. Hofacker filed a claim with the Department of the Army for \$3,500, covering injuries, loss of time, loss of income, and any future recurrence of injury. However, upon determining that the claim arose from activities of the Air Force, it was transferred to that Department on May 22, 1953. Thereafter, on June 16, 1953, the claim was returned to Mr. Hofacker without action because it was in excess of \$1,000, the amount that could be considered administratively by the Air Force under section 2672 of title 28, United States Code, and he was advised that his remedy was to bring suit under the Federal Tort Claims Act.

Thereafter, on October 8, 1953, Mr. Hofacker filed suit for \$10,000, under the Federal Tort Claims Act, in the U.S. District Court for the Southern District of Ohio, for injuries allegedly suffered because of negligence of the Air Force. This suit was determined in favor of the United States. Judgment was based upon the ground that the activity giving rise to the lawsuit involved a "discretionary function" within the purview of section 2680(a) of title 28, United States Code, and was an exception to the general waiver of sovereign immunity granted by the Federal Tort Claims Act. The appeal period for the judgment expired on May 25, 1956, and the judgment became final on that date.

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It appears, in this case, that the proximate cause of the injuries to the claimant was the free fall of the radiosonde device. However, Mr. Hofacker has no administrative remedy and no legal recourse against the United States because the doctrine of sovereign immunity applies here. In this connection, it is pointed out that a private citizen, under similar circumstances, might well be liable to the claimant. Accordingly, for equitable reasons, Mr. Hofacker should be compensated for his injuries and expenses.

In his original complaint under the Federal Tort Claims Act, Mr. Hofacker claimed that the accident caused injuries to his back, a right inguinal hernia, lacerations, bruises, and contusions. He has proof of medical expenses of \$357.81 and loss of 6 weeks' pay for part-time work for \$180. However, this does not purport to be the entire amount of wages lost, since he claims that he lost at least 6 months of work.



For the foregoing reasons, the Department of the Air Force interposes no objection to the enactment of H.R. 11420.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LEWIS S. THOMPSON,  
*Special Assistant for Manpower, Personnel, and Reserve Forces.*

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 the statement of the fact."  
 "The fact is that it is no other than the statement  
 of the fact."

Q. Now, when you say "the fact is that it is no other than the statement of the fact," are you saying that the fact is the statement of the fact?

Q.